IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Appeal against Order no.22/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P.Lavande, J.
DATED :10th August 2006

Heard Mr. Tajne, Advocate for the appellants and Mr. Wagmare, Advocate for the respondent.

This appeal is directed against order dated 20/2/2006 passed in Special Civil Suit No. 968/2005 by 4th Joint Civil Judge, Sr. Dn. Nagpur granting injunction against appellant who is the defendant in the above suit filed by the respondent.

The respondent filed the above suit for specific performance of contract dated 1/12/2004 between the parties in respect of the suit property. Since the defendant did not execute the sale deed the suit was filed along with an application for temporary injunction seeking injunction

against defendant from alienating or transferring the suit property to any third party or creating any third party interest in the suit property till final disposal of the suit. The trial Court upon appreciation of the materials produced on record granted injunction.

Learned counsel appearing for the appellants submitted that the trial Court has not exercised its discretion properly while granting injunction sought for. According to appellants, the conduct of the plaintiff clearly disentitles any interim relief in her favour. According to learned counsel for the appellants, the trial Court did not take into consideration the relevant aspects for the purpose of deciding the application for injunction filed by the respondent. Mr. Waghmare, learned counsel for the respondent submitted that the trial Court has correctly exercised its discretionary jurisdiction while passing impugned order inasmuch as the trial Court has granted injunction restraining the defendant from

transferring the suit property or creating third party interest in the suit property till the disposal of the suit. According to learned counsel no interference is called for in the present appeal.

I have perused records and considered the submissions made by learned counsel for the parties.

It is well settled that jurisdiction to interfere against an order granting or refusing injunction passed by the trial Court in an appeal therefrom is very limited inasmuch as such an appeal is only an appeal on principle as held in 1990 (supp) Supreme Court Cases 727 (Wander Ltd. and another Vs. Antox India P. Ltd.). I am satisfied that the interim order has been passed following the principles required to be looked into while considering the application for injunction in a suit filed for specific performance. In my opinion, the findings recorded by the trial Court cannot be said to be perverse warranting interference in appeal. Hence, I do not find

any merit in this appeal.

At this stage, Mr. Tajne, learned counsel for the appellants states that the appellants are senior citizens and hearing of the suit may be expedited.

I am not inclined to pass any order of expedition. However, considering that the appellants are senior citizens,the appellants are at liberty to file an application for early disposal of the suit before the trial Court and in case such an application is filed, the trial Court to consider the application on its own merits and pass appropriate order.

The appeal is dismissed in the aforesaid terms with no order as to costs.

JUDGE

A.